

# Diversion and Access To Mental Health Services In Prisons and Jails

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**SAMHSA**  
Substance Abuse and Mental Health  
Services Administration

# Disclaimer

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# Eric Buehlmann – National Disability Rights Network



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# Protection and Advocacy (P&A) Network Background

P&A agencies have the authority to provide legal representation and other advocacy services, under all federal and state laws, to all people with disabilities (based on eligibility and a system of priorities for services).

Maintain a presence in facilities that care for people with disabilities, where they monitor, investigate and attempt to remedy adverse conditions.

57 agencies: State and Federal Funds

Lawyers with “Special Powers” (access and standing)

# P&A Criminal Justice Work

Most P&As do criminal justice (CJ) work, like diversion, conditions, and reentry cases.

P&As set casework priorities at the state level.

P&As do not represent individuals in criminal cases.

P&As work to ensure that the needs of individuals with disabilities are met when they are in contact with the CJ system.

# Possible P&A Activities

- Using monitoring of jails/prisons and mental health facilities to assess the evaluation and restoration processes
  - Using access authority
- Investigate allegations of abuse and neglect concerning individuals with disabilities within jails/prisons and mental health facilities
- Providing legal advocacy individually and systemically to improve conditions of confinement and access to treatment for individuals with disabilities within jails/prisons and mental health facilities
- Providing technical assistance regarding disabilities issues to public defenders and criminal defense attorneys.

# Merry Postemski, M.S. – Disability Rights Vermont

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# Diversion and Access to Mental Health Services

Innovative ways individuals vulnerable to or living with mental illness and/or substance use issues are diverted from the traditional criminal justice system throughout Vermont, with the goals of:

Preventing delinquent/criminal behavior

Accessing appropriate treatment

Preventing incarceration

Reducing recidivism

# Pre-Charge Programs in Vermont

## “Downstream Mentoring”

A collaboration between Rutland County Court Diversion and Restorative Justice Center and the Mentor Connection, funded by the United Way of Rutland County, serving vulnerable youth in order to:

Improve self-esteem

Foster emotional intelligence

Reduce conflict

Improve decision making and communication skills

Prevent or reduce drug/alcohol use and delinquent activity

# Pre-Charge Programs in Vermont

Community and Restorative Justice Centers  
(direct referrals from law enforcement)

Act 80: Mandatory law enforcement training re:

Interacting with Persons with a Mental Illness

Team Two: A Training for Law Enforcement and  
Mental Health Crisis Workers

Collaborative First Responders: Mobile Crisis  
Workers/Mental Health Workers/Social Workers  
and Law Enforcement

# Post-Charge Programs in Vermont

Vermont Association of Court Diversion Programs (VACDP)  
3 V.S.A. § 163-164; 7 V.S.A. § 156-157

Balanced and Restorative Justice (BARJ-DCF)

Pre-Trial Services (PTM/Tamarack) 13 V.S.A. § 7554c

Restorative Justice/Reparative Probation 28 V.S.A. § 910

Mental Health and Drug Courts (VT Judiciary)

# Mental Health In Vermont Prisons

Delayed Placement Persons “DPP”

Prisoners with Serious Functional Impairments (SFI) 28 V.S.A. § 701a; 28 V.S.A. Subchapter 6

Act 78 (S.61) – 2017: An act relating to offenders with mental illness, inmate records, and inmate services

# Notable cases

Notable cases:

C.S. v. State of Vermont et al., Docket No. 231-4-17 Wncr (long term segregation in prison)

Patient X v. State of Vermont et al., Docket No. 2:17-cv-8 (segregation of prisoner identified as needing inpatient treatment)

Anthony Pretty, As Administratrix of the Estate of Robert Mossey v. State of Vermont et al., Docket No. 907-9-14 Cncv (wrongful death in prison)

Patient A v. State of Vermont et al., Docket No. 5:14-cv-206-gwc (failure to transfer prisoner needing inpatient care to hospital)

Bowen v. State of Vermont et al., 5:18-cv-00008-gwc (return to prison from inpatient psychiatric hospital without adequate treatment capacity)

Prisoner A v. State of Vermont et al., 2:15-cv-00221 (discrimination in prisoner re-entry to community compared to non-disabled peers)

# Amanda Antholt - Equip for Equality

Equip for Equality (EFE)

*A disability rights not-for-profit and the Protection & Advocacy system for the State of Illinois*

Diversion through Police Reform  
and Access to Mental Health Treatment in  
Illinois Prisons

Presented by Amanda Antholt,  
Senior Attorney

## Why Police Reform?

People with disabilities have disproportionate contact with the police.

- **Crime Victims:** People with disabilities are more than twice as likely as people without disabilities to be the victims of violent crimes. (Bureau of Justice Statistics, 2013).
- **911 Calls:** Approximately 22,000 calls to 911 were coded as mental illness-related in Chicago in 2012.

## Why Police Reform? *Disproportionate contact leads to disproportionate results.*

### **Use of Force:**

Estimated that ½ of police shootings are of people with mental illness, hundreds annually.

People with untreated mental illness **are 16 times as likely** to be killed during a police encounter as other civilians approached or stopped by law enforcement, according to a study released by the Treatment Advocacy Center.

**Arrests:** People with disabilities have a 43% probability of being arrested by the age of 28; compared to a 30 percent probability for people with out disabilities. A person with a disability who is also Black has a probability of 55% of being arrested.

(<http://ajph.aphapublications.org/doi/10.2105/AJPH.2017.304095>)

# *Communities United v. City of Chicago*

January 2017: Department of Justice issued a report, finding that the City of Chicago engaged in a pattern and practice of unreasonable force.

Together with the American Civil Liberties Union, EFE filed a lawsuit challenging the city's policies and practices under the Americans with Disabilities Act & the United States Constitution.

The lawsuit seeks a permanent injunction to require the city to modify its policies, practices & training.

**Seeking changes to stem the number of people with disabilities entering the criminal justice system.**

# Incarceration

1,561,500 people incarcerated in the United States; approximately 31% have disabilities.

National Alliance on Mental Illness estimates that between 25 and 40 percent of all Americans with mental illness will be jailed or incarcerated at some point in their lives.

Cook County Jail - It is estimated that 35 percent of this population is on the mental health caseload. (9,000 average daily population).

# Mental Illness in Illinois Prisons

In Illinois, about 1/3 of the prison population is on the mental health caseload (over 12,000 people).

4,843 have a serious mental illness (35% of the male caseload and 69% of the female).

More than 80% of Department of Correction's population in segregation has a mental illness.

# Barriers to Mental Health Treatment in Illinois Prisons

Shortage of skilled mental health treatment staff, in quantity and quality.

Lack of adequate treatment spaces, including no inpatient hospital.

Lack of confidentiality.

Failure to properly manage medications.

Punitive responses to mental illness, including privilege restrictions and lengthy segregation.

# *Rasho v. Baldwin:* 2015 Settlement Agreement

Hospital for in-patient care;

Significantly increased staff, including more than 300 new clinical staff and 400 new security staff;

Construction of four new residential treatment units;

Implementation and improvement of treatment systems and timelines;

Training for all staff; and

Significant reduction of solitary confinement.

# *Rasho v. Baldwin*: Successes in the 1<sup>st</sup> year of the settlement

- ✓ Construction of new units:
  - Elgin – 44 Unit Inpatient Hospital.
  - Joliet – 486 Residential Treatment Unit (RTU) for Men.
  - Logan – 106 RTU for women (Phase 1 complete).
  
- ✓ Improved intake screening & evaluations
  
- ✓ Increased out-of-cell time for those with mental illness in segregation
  
- ✓ Reduction in long-term segregation
  
- ✓ Confidential treatment ... *a work in progress.*

# *Rasho v. Baldwin:* Continued barriers and challenges

## Treatment Centers:

- Total RTU Capacity by Summer 2018: **1280.**
- Inpatient Treatment Center: capacity **44.**

## Population in Need:

- The mental health case load: **12,052**
- Considered seriously mentally ill : **4843**
- Secluded in crisis cells for more than 10 days in the last 3 months of 2017: **232**

## ***Rasho v. Baldwin***: The Independent Court Monitor's Findings of Non-Compliance

Insufficient mental health staffing at all levels are prohibiting the treatment requirements, and causing burnout and high levels of turnover among mental health staff.

Psychiatric services that are “grossly insufficient and of extremely poor quality” are placing prisoners on psychiatric medications in danger.

Security staff acting as “gate keepers” to requests for the Crisis Intervention Team.

***Rasho v. Baldwin:*** The Independent Court Monitor's  
Findings of Non-Compliance (continued)

The level of services provided to those in crisis care is “woefully inadequate to meet their treatment needs.”

Discontinuation of mental health treatment in segregation and failure to enhance treatment where necessary due to impact of isolation is leading to increased self-harm, crisis watches, and decompensation.

Treatment plans are boilerplate and fail to facilitate necessary or coordinated treatment.

# *Rasho v. Baldwin*: Litigation to Enforce the Settlement Agreement

A pending motion to enforce targets five core issues:

- (1) medication management;
- (2) timely mental health evaluations;
- (3) treatment planning;
- (4) care on crisis watches; and
- (5) treatment and out-of-cell time in segregation.

Evidentiary hearings began in December 2017.

# ***Rasho v. Baldwin***: Litigation to Enforce the Settlement Agreement

## **The Request For Relief Seeks:**

- A compliance plan with strict deadlines for adequate staffing levels and the provision of treatment.
- End the use of segregation for prisoners with mental illness.
- Require transfers to inpatient hospital facilities for anyone on crisis watches for more than 5 days.

# Contact



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**Diversion from Segregation and  
Access to Mental Health Services  
in NY Prisons and Jails**

**Elena Landriscina, Staff Attorney  
Disability Rights New York (DRNY)**

# New York State Prisons

Diversion of people with serious mental illness  
from segregation

*Anderson v. Coughlin*, 87-cv-141 (NDNY), mental health  
considered in discipline; 7 NYCRR 254.6

*Disability Advocates Inc. v. NYS Office of Mental  
Health et al.*, 02-cv-05418 (SDNY), diversion  
from segregation, increase in mental health  
program beds & hospital beds

Special Housing Unit (SHU) Exclusion Law,  
codified at NY Mental Hygiene Law §  
45.07(z), NY Correction Law §§ 2, 137.6,  
401, 401-a.

# SHU EXCLUSION LAW

## **Diversion to Residential Mental Health Treatment Unit**

Jointly operated by Department of Corrections and Community Supervision (DOCCS) and Office of Mental Health (OMH)

Therapeutic setting “appropriate to clinical needs”

Clinical determination related to conditions, restrictions on programming

No discipline for self-harm and related acts

Segregated confinement sanctions limited to “significant and unreasonable risk” to the safety

4 hours of out-of-cell programming, Monday-Friday

Special training for staff

Oversight by New York State (NYS) Justice Center

# SHU EXCLUSION LAW

Reduction in number of people with serious mental illness in SHU/Long-Term Keeplock

Established processes for mental health staff to provide input

However, in some diversion programs . . .

- High rates of discipline

- Program access restrictions

- High rates of self-harm

- Deprivations without assessment of therapeutic need (e.g., plexiglass shields over cell fronts)

Justice Center review - narrow focus on process requirements v. quality of assessments

# DRNY's Ongoing Efforts

## **Frequent monitoring**

Residential Mental Health Treatment Units (RMHTU) and programs for people with Intellectual and Developmental Disabilities

## **Reports on SHU Exclusion Law issues**

Report on Attica Residential Mental Health Unit (RMHU) (Sept. 2017)

Findings regarding suicide in SHU (Nov. 2017)

## **Bi-annual meeting with DOCCS**

**Bi-annual meetings with the Justice Center with coalition partners** (Mental Health Alternatives to Solitary Confinement)

# NY Upstate Jails

## Lack of resources in upstate's 57 county jails

Few behavioral health units

Limited psychiatric staffing; many counties rely on private medical/mental health providers

No diversion units for people with mental illness with disciplinary infractions, no mental health input into disciplinary process/segregation sanctions

High use of discipline on people with mental illness, none or limited assessments in segregation units

High use of restraints on people with mental illness

# NY Upstate Jails

## **NYS Commission of Correction (COC) –**

COC has limited oversight of county jails; standards fail to address mental health staffing, assessment, and limits on segregation

DRNY comments on COC proposed segregation regulations (Dec. 2017);

investigations/monitoring; reviewing COC's restraint data

# New York City Jails

**Mental Observation Units** – general population

**Program for Advancing Clinical Effectiveness**

Assessment

Hospital Step Down (Bellevue, Elmhurst)

730 PACE unit serves people who are  
returning to jail after competency restoration

Acute Care

Re-entry (sentenced prisoners) (Feb. 2018)

**Clinical Alternatives to Punitive Segregation** –

people with infractions

# Contact

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# Questions



Photo depicts several questions marks with one question mark in red.